

**Town of Milford
Zoning Board of Adjustment Minutes
November 7, 2013
Case #2013-21
Charles & Jessica Morgan
Special Exception**

Present: Fletcher Seagroves, Chairman
Laura Horning, Vice Chair
Zach Tripp
Michael Thornton, Alternate
Joan Dargie, Alternate

Absent: Kevin Taylor
Bob Pichette
Len Harten, Alternate
Paul Butler, Alternate

Secretary: Peg Ouellette

The applicants, Charles & Jessica Morgan, owners of Map 41, Lot 9, 123 Chappell Dr, in the Residence “R” District, are requesting a special exception from Article V, Section 5.04 to allow a family group child care home, as defined and licensed by the State of NH, that is not an acceptable use or use by special exception in the Ordinance.

Minutes approved & signed January 16, 2014

Fletcher Seagroves, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board; he then introduced the Board. He read the notice of hearing into the record. The list of abutters was read. Charles and Jessica Morgan, owners of 123 Chappell Dr, were present. Abutters present were: Scott Kimball of 207 Whitten Rd, Richard and Diana Schofield of 114 Chappell Dr, W. Penn & Gloria J. Schooley of 104 Chappell Dr, and Roberta B & Eric P. Schelberg of 186 Whitten Rd.

J. Morgan stated they want to open a family day care with a couple of school age children and two of their own who would be included in the total number of children; something small and quiet.

Z. Tripp asked if the maximum of six children included their own children.

J. Morgan said yes, that is what the State allows.

Z. Tripp referred to the driveway off to the side and asked whether it was intended for parking and whether it was wide enough to turn around.

J. Morgan it was; they have three cars and have a lot of visitors. There is plenty of room for cars to turn around.

Z. Tripp asked whether drop-off and pick-up would be all at the same time or staggered.

J. Morgan said it would be according to the parents' needs. They anticipate opening at about 7:30 AM and closing around 5:30 PM.

Z. Tripp asked about signage and extra lighting.

J. Morgan responded there would be no signage and it is already well lit with the house lighting except for this time of year when it starts getting dark at about 5:30 which is the pick-up time.

F. Seagroves stated this was a Special Exception which is allowed under special conditions and is regulated by the State.

Fletcher Seagroves opened the meeting for public comment.

Scott Kimball of 207 Whitten Rd said his property abuts applicants' back yard; he would hear any noise coming from applicants' yard. He felt that a residential area is for residential. He understood there were exemptions, but felt there should not be any businesses in the area. When buying a home in a residential area, one expects to have residential use. If he had known it would be a semi-commercial area, he would have thought about not moving there. As a UPS driver he delivers to child care facilities of different sizes and there is no way to mitigate the noise. This will impact the quiet, comfort and enjoyment of his property. He asked that the request be denied.

Katherine Bauer of 247 N. River Rd. asked whether applicants planned on fencing in the yard where children will play.

J. Morgan said they might if they find it was needed. She didn't feel the children needed to be contained any more than what they are in the yard.

F. Seagroves asked where children would be in the yard.

J. Morgan said from the house to the right in the flatter area. They will be putting a play set back there under the trees. They will put it as far from the other property they could get.

Roberta Schelberg of 186 Whitten Rd said she lives directly across the street. She asked about any monitoring if the Special Exception goes through, because they could have more than six children in the future.

L. Horning responded that it is regulated by the State which only allows six children including her own, and the State would monitor how the children are being cared for.

R. Schelberg asked about liability issues for neighbors. She and the Morgan's have in-ground pools. What if a child got into the pool and drowned?

L. Horning said the State many require a fenced area. House insurance would come into play with the State.

R. Schelberg said Whitten Rd has a lot of activity and if one Special Exception was allowed, what would happen if others want the same? She is concerned it would open the door to other businesses.

F. Seagroves said the Ordinance authorizes home occupations in Residence R.

L. Horning added that the ordinances are voted in by the residents.

F. Seagroves said this is a Special Exception which can be granted if the applicants meet the criteria. If so, the ZBA can grant it.

L. Horning said it is important for residents to come and express their concerns.

R. Schelberg said she was doing that. Even though there will be only six children, she has two, and they can disappear very fast. She expressed concern about the pools in the area and liability if her dog jumps on someone and knocks them over. If something were to happen to a child, everyone gets in on a lawsuit.

K. Bauer expressed concern that this day care center should have a fence for the children so no one will get into the street or anybody's pool. She asked for a condition for a fenced-in area for the children.

S. Kimball would like that fence to be aesthetically pleasing; not a chain link with aluminum strips. He expressed concern about this special exception becoming a larger request to expand and request a variance, which they did before.

F. Seagroves stated that according to the ordinance it only allows them so many children.

Z. Tripp suggested reading the ordinance.

S. Kimball asked about applicant coming back for a variance.

F. Seagroves said they could try that.

L. Horning said that is why there is a Zoning Ordinance. The applicants have the right to use their property and have right to request a Special Exception. Residents have a right to come to the ZBA for Special Exception or Variance. The ZBA's job is to look at the letter of the law and the application and make sure they meet the criteria.

S. Kimball said he has property rights. He appreciated that applicants want to make a living but when a business spills out into the yard it affects the neighbors' quiet and enjoyment.

Eric Schelberg of 186 Whitten Rd. asked about the hours and days of operation and whether she would be open on holidays.

J. Morgan said the hours would be Monday-Friday from 7:30 AM to 5:30 PM. She would not be open on Christmas but may be open some holidays, based on the needs of parents. She pretty much will be open on days when parents are working. It is what they are allowed and six children are manageable. They will be outside a few hours a day.

E. Schelberg asked the ages of the children she will be accepting.

J. Morgan said eight weeks to maybe five years old, kindergarten age and maybe a couple of after-school kids. If there are siblings, ages 2, 5 and 6, she wouldn't refuse the six-year-old.

E. Schelberg inquired if there would be ten children total.

J. Morgan said her children are included in the six and reiterated that the State only allows six. In order to get licensed she must appear before the ZBA to get zoned.

E. Schelberg wanted to clarify that there won't be her two children and six others.

J. Morgan said up to five that are not school age and one more after-school age.

E. Schelberg asked if there would be a total of up to eight.

J. Morgan said that is what the State licensing board allows.

Z. Tripp read the definition for Family Day Care Home from the Ordinance and said there will be two younger, plus the applicants' two, plus three school age; possibly nine total or seven that are not currently there.

E. Schelberg referred to a comment made about being able to have a business. He respects that, but he was also concerned about noise. He compared it to cigarette smoking which used to be allowed anywhere. Noise affects everybody. He heard a lot of noise this summer.

J. Morgan said they entertain a lot.

E. Schelberg expressed concern about enjoyment of his property and safety of children, being a responsible party for anyone who gets injured in the community and liability with someone going into his yard. He commented he might want to open a home shop in his house, but something that would not bother anybody.

Richard Schofield of 114 Chappell Dr. asked whether granting a variance created a precedent for future applicants.

F. Seagroves explained this is a Special Exception, not a Variance and explained the difference.

R. Schofield asked if a variance would be more difficult to achieve.

F. Seagroves said under special conditions this could be granted, if they meet the criteria.

R. Schofield asked, assuming it was granted, would this be considered as part of future applications for a Special Exception. Was concerned that granting this would open the door for future special exceptions in the area.

F. Seagroves said they take each case separately and they have to meet all five criteria.

R. Schofield asked about restrictions if the applicants want to grow the business.

F. Seagroves said they would have to change the Ordinance definition or the State would have to change theirs.

Bill Parker, Community Development Director stated that what they are applying for limits them to exactly what may or may not be approved this evening. For any change they would have to reappear before the Board and get new approval.

L. Horning mentioned that residents can go to the town website to see the ordinance.

Diana Schofield asked if the covenants in place on Chappell Dr had any bearing.

B. Parker said not as far as town regulations. They are private agreements between the developer and the residents. The Town does not have ability to enforce or approve covenants. That would be a matter of homeowners and property owners in the area.

F. Seagroves asked for any further questions; there were none and the public portion of the meeting was closed.

J. Morgan read the application into the record.

F. Seagroves read an e-mail sent to Bill Parker from John Glow of 115 Chappell Dr into the record.

Z. Tripp asked whether they plan to use the entire house, or a portion of it.

J. Morgan said not the upstairs with bedrooms, but the main living floor and finished basement provided it passes fire code.

Z. Tripp asked whether the State or Town would inspect the basement.

J. Morgan responded not until they pass zoning.

F. Seagroves asked if he was correct that one other person would be working there.

J. Morgan said probably.

F. Seagroves had concern about care of the children outside. Children can disappear very fast. They should think about a fenced area so children cannot wander away, if there are pools in the area.

J. Morgan said their pool was fenced with a lock and there was no way to get to it without unlocking. There is a sliding door that has a lock and garage has a metal dead bolts; however, they would have no opposition to putting up a fence.

F. Seagroves asked whether they would be going before the Planning Board.

B. Parker said they would not.

There were no other questions from the Board, so they moved on to discussion of the criteria.

1. The proposed use shall be similar to those permitted in the district:

Z. Tripp said yes. It is allowed by special exception. A day care facility is in the nature of residential area.

L. Horning agreed, it is permitted in that district as outlined in ordinance.

M. Thornton said it is seemingly allowed and seemingly required.

J. Dargie said it is allowed by special exception.

F. Seagroves agreed it is similar because it is allowed by special exception.

2. The specific site is an appropriate location for the proposed use because:

Z. Tripp said yes. The applicants have a fairly large lot, the house is good-sized, and the driveway looked wide enough to turn around. It is a pre-existing residential lot and house with an appropriate location.

L. Horning agreed with Zach. It is an appropriate location and the driveway is large enough for a car to turn around without backing into the street. It is allowed by special exception.

M. Thornton said it is allowed and seems well thought-out with the one problem of backing into the street. That needs to be impressed upon the customers.

J. Morgan stated they will tell customers.

J. Dargie agreed it was an appropriate location for the proposed use. She would feel better with putting up a fence. L. Horning felt the State would require it, but thought the Board could put in a condition.

F. Seagroves agreed the location was appropriate location. Some of the six children will be very small and probably inside most of the time.

3. The use as developed will not adversely affect the adjacent area because:

L. Horning didn't believe it would have an adverse effect. Anyone could move into a house with any number of children, with no say by neighbors. There is no say on how many children come and go in any particular home. She was sure the applicant was clear on the neighbor's concerns about noise.

Z. Tripp agreed. There is no adverse affect. There would probably be more traffic on Whitten Rd but, per comment that it is a pretty busy road, a few more cars will not be a huge addition. Being the first house on Chappell Dr, cars will not be driving on Chappell. He appreciated the concerns regarding the noise, but having six children playing outside is not unreasonable. If you had six kids in two adjacent lots you would have the same effect. The applicants have done a good job of balancing the needs of the residences.

M. Thornton saw no insurmountable obstacles. He assumed that everyone wished to try to be good neighbors and any untoward noise would be stifled to some degree. The need for good citizenship for playing there would be impressed on the children's parents. He had no concerns other than that.

J. Dargie agreed.

F. Seagroves said children will make some noise. If it gets out of hand, the neighbors should call the applicant.

J. Morgan agreed.

F. Seagroves said being around children all the time, you don't notice the level of noise but felt the applicant had no problem with the neighbors calling. For their own safety, they should put in a stipulation for a fence.

M. Thornton said regarding the comment for aesthetics of the fence, maybe planning with the neighbors before rather than after might be a good idea.

F. Seagroves agreed.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

Z. Tripp said no, there will be no nuisance to vehicles and the driveway is large. He would have expected to see a fence in the back. To answer yes to this question, he would need a requirement that the outdoor play area be fenced in.

L. Horning agreed. She didn't see nuisance or hazard to vehicles or pedestrians. She is putting kids in the back yard, not the front or near neighbors. These are good-sized lots with a tree buffer at the corner. It would be unlikely the children would see a vehicles or pedestrian. The traffic pattern for the driveway seems straightforward in and out. There shouldn't be any issues with the flow of the traffic; there are no crossing sidewalks or anything.

M. Thornton felt there was no nuisance. The only thing is a safety situation where someone attempting to turn around and back out and not being careful enough of a child/children behind. That would be applicants' burden.

J. Dargie didn't see any nuisance or serious hazard to vehicles or pedestrian.

F. Seagroves didn't see any nuisance. People will be coming in at different times, probably not a lot of vehicles at the same time since not every parent gets out of work at 5:00 or is coming from the same place.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

Z. Tripp said it is a good-size lot, house, driveway and lawn. There are local and state permitting processes. His only concern is that they might want to check egress requirements. The applicant said they expect when fire and safety inspections take place they will be told of any reason not to use the area and will not if that is the case.

L. Horning agreed. The State will do inspection as well as the Fire Marshall. The footprint of the house is substantial enough and the lot is fairly large. There is a tree buffer, so not even a lot of visibility from the street.

M. Thornton said he didn't have any concern for facilities except for only one restroom on the main floor. J. Morgan stated if a child needed to, they could use the other one upstairs.

F. Seagroves said he didn't know State requirements.

J. Morgan said it is one for twenty children.

J. Dargie agreed facilities are appropriate.

F. Seagroves agreed facilities looked appropriate.

L. Horning moved to stipulate that adequate fence that is aesthetically in keeping with the neighborhood and its surroundings be added before the day care is allowed to operate.

Z. Tripp seconded the motion.

All voted in favor. Motion passed.

Is the special exception allowed by the Ordinance?

L. Horning – yes; Z. Tripp – yes; M. Thornton – yes; J. Dargie – yes; F. Seagroves – yes

Are the specific conditions present under which a special exception may be granted?

Z. Tripp – yes; M. Thornton – yes; J. Dargie – yes; L. Horning – yes; F. Seagroves – yes

Z. Tripp made the motion to approve Case # 2013-21.

L. Horning seconded the motion to approve Case #2013-21

Final Vote:

Z. Tripp – yes; L. Horning – yes; M. Thornton – yes; J. Dargie – yes; F. Seagroves - yes

Case #2013-21 was approved by unanimous vote.

F. Seagroves reminded the applicant of the 30 day appeal period and said they would have to work with the State and the Community Development office.